

The Honorable Barbara J. Rothstein

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NORTHWEST ENVIRONMENTAL
ADVOCATES,

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, *et al.*

Defendants.

Case No. 2:21-cv-1637-BJR

**JOINT MOTION TO RE-OPEN
AND SET INITIAL LITIGATION
SCHEDULE**

Plaintiff Northwest Environmental Advocates (“NWEA”) and Defendants United States Environmental Protection Agency (“EPA”), Michael Regan, in his official capacity as EPA Administrator, and Casey Sixkiller,¹ in his official capacity as EPA Regional Administrator for Region 10 (collectively, the “Parties”), have conferred and hereby respectfully file this Joint Motion to Re-Open and Set Initial Litigation Schedule for this matter.

1. On December 7, 2021, NWEA filed this matter alleging that EPA has failed to

¹ Casey Sixkiller is substituted for Michelle Pirzadeh, who was named in her official capacity as the Acting Regional Administrator at the time NWEA filed its Complaint.

1 comply with a mandatory duty under the Clean Water Act to develop Total Maximum Daily
2 Loads for certain types of water pollution in Puget Sound. EPA has not yet filed a responsive
3 pleading, but denies the allegations.

4 2. Since shortly after the Complaint was filed, the Parties have engaged in settlement
5 discussions. Despite the Parties' good-faith efforts, those settlement discussions were not
6 successful. The Parties do not believe that those discussions would benefit from court-sponsored
7 settlement negotiations at this time.

8 3. To allow for those settlement discussions to continue, the Court extended the initial
9 litigation deadlines several times at the request of the Parties and then administratively closed the
10 case on September 9, 2022.

11 4. The Parties agree that, ultimately, this case may be resolved through motions for
12 summary judgment, and that a trial is unnecessary.

13 5. The Parties disagree about the scope of judicial review in this case. NWEA's position
14 is that discovery is appropriate, while EPA's position is that judicial review is limited to an
15 administrative record. The Parties are working to find a resolution without the need to adjudicate
16 this issue, if possible. As outlined below, the Parties propose dates for NWEA to file an amended
17 complaint, for EPA to file an answer or other response to that amended complaint, for EPA to file
18 the administrative record for judicial review, and, if the discussions noted above are
19 unsuccessful, for NWEA to file a motion objecting to the appropriateness of judicial review on
20 the administrative record in this case or to the adequacy of the administrative record.

21 6. Plaintiff has attached to this motion a copy of the First Amended Complaint that they
22 request leave to file. EPA has reviewed that proposed complaint and does not oppose the Court
23 granting Plaintiff leave to file the attached First Amended Complaint.

24 7. The Parties will propose to the Court a Joint Proposed Case Plan shortly after the
25 scope of judicial review has been resolved, either by agreement or by the Court through
26 adjudication of that issue.

27 8. The Parties respectfully request the Court set the Initial Litigation Schedule set out
below.

9. There is good cause to grant this motion because it will allow the Parties to efficiently resolve, either through their ongoing discussions or adjudication, if necessary, their disagreement over the scope of judicial review. That resolution would preserve the resources of the Court as well as the Parties. That resolution would also allow the parties to assess the next appropriate proceedings in this case and submit their Joint Proposed Case Plan.

ORDER

Based on the foregoing joint motion, and for good cause shown, it is hereby ordered that this case is re-opened. It is further ordered that the Initial Litigation Schedule below shall be in effect.

Action	Proposed Deadline
NWEA to file First Amended Complaint	Within 7 days of the Court's order reopening the case
EPA to file Answer or other responsive pleading	Within 30 days of NWEA's filing of the First Amended Complaint
EPA to file the index to the record for judicial review, together with the record documents, with the Court (and produce the same to NWEA by that date)	Within 14 days after EPA's Answer or other responsive pleading
If necessary, NWEA's motion challenging the appropriateness or adequacy of EPA's record	October 1, 2024
EPA's response to NWEA's motion on the record	October 31, 2024
NWEA's reply	November 21, 2024
Parties to file a Combined Joint Proposed Case Plan, addressing the information required in the Court's Initial Scheduling order, including any outstanding evidentiary issues	Within 21 days of the Court's resolution of any motion challenging the appropriateness or adequacy of EPA's record or the Parties coming to a resolution on the appropriate scope of judicial review. If no such motion is filed, by October 15, 2024.

It is so ordered, this 1st day of July 2024.



Barbara J. Rothstein
United States District Judge

Respectfully submitted,

Andrew M. Hawley

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was electronically filed with the Clerk of the Court June 28, 2024, using the Court's electronic filing system, which will send notification of said filing to the attorneys of record that have, as required, registered with the Court's system.

Andrew M. Hawley

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